

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

BERNARD KELLY, #526389,

Petitioner,

Case No. 12-11005

Honorable Thomas L. Ludington

v.

KENNETH ROMANOWSKI,

Respondent.

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**ORDER DENYING MOTION FOR MAGISTRATE’S  
REPORT AND RECOMMENDATION AND DENYING AS MOOT MOTION FOR  
LIBERAL CONSTRUCTION**

This matter is before the Court on Bernard Kelly’s “Motion for Magistrate’s Report and Recommendation” seeking to have his pending habeas case referred to a magistrate judge for consideration pursuant to Federal Rule of Civil Procedure 72, as well as his “Motion for Liberal Construction” seeking to have the Court liberally construe his pro se pleadings.

**I**

Kelly requests that his case be referred to a United States Magistrate Judge. Under the federal habeas rules, a magistrate judge may perform the duties of a district judge as authorized by 28 U.S.C. § 636, except for ultimate decision-making authority. *See* Rule 10, Rules Governing Section 2254 Cases; *Blackledge v. Allison*, 431 U.S. 63, 81 n.22 (1977). Title 28 U.S.C. § 636(b)(1)(B) provides that a district judge “may . . . designate a magistrate judge . . . to submit to a judge of the court proposed findings of fact and recommendations for the disposition . . . of applications for posttrial relief made by individuals convicted of criminal offenses . . .” This rule “permits, but does not require, a district judge to designate a magistrate judge to submit proposed findings or recommendations for the disposition of a case.” *Dawson v. Marshall*, 561 F.3d 930, 932

(9th Cir. 2009). Thus, “reference to a magistrate judge is entirely discretionary . . . [and a] litigant has no right to a magistrate judge.” *Id.* at 933. Although the Court has discretion to refer this habeas case to a magistrate judge, the Court declines to do so at this time.

## II

Kelly also asks the Court to liberally construe his pro se habeas pleadings, citing *Haines v. Kerner*, 404 U.S. 519 (1972). Kelly is correct that federal courts liberally construe pro se pleadings. Additionally, federal courts reviewing habeas corpus petitions must apply the standard of review established by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), codified 28 U.S.C. § 2241 *et seq.* The Court is well aware of its obligation to follow the law in resolving this matter. Kelly’s motion is therefore unnecessary.

## III

Accordingly, it is **ORDERED** that Kelly’s motion for a magistrate’s report and recommendation, ECF No. 13, is **DENIED**.

It is further **ORDERED** that Kelly’s motion for liberal construction, ECF No. 14, is **DENIED** as moot.

Dated: January 27, 2014

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

### PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail, and upon Bernard Kelly #526389, Adrian Correctional Facility, 2727 Beecher Rd, Adrian, MI 49221 by first class U.S. mail, on January 27, 2014.

s/Tracy A. Jacobs  
TRACY A. JACOBS